

60,427-282
2000P07905US01

attenuation, one mode for sports car driving and the other mode for normal driving. Applicant respectfully disagrees with the Examiner's interpretation of *Uesugi, et al.*

Uesugi, et al. discloses a dual mode exhaust system in which an operator can manually select between a first mode and a second mode of exhaust noise (see abstract). *Uesugi, et al.* does not disclose a control unit that selects between a first driving mode and a second driving mode as is required by the claims. Applicant continues to refute that it is well known in the art to utilize a control unit to select between a first driving mode in response to a high engine speed and a high engine mode and a second driving mode in response to a low engine speed and a low engine mode. Accordingly, even if the combination could be made, the combination fails to disclose each feature required by Applicant's claims.

Even assuming the proposed combination could be made, the Examiner has still failed to establish a *prima facie* case of obviousness under 35 U.S.C. §103. Whenever there is no benefit to making a proposed combination, there is no *prima facie* case of obviousness.

In this instance, there would be no benefit to modifying the *Fischer, et al.* reference in the proposed manner because *Fischer, et al.* already discloses modifying the engine noises of a car with suitable secondary oscillations to either suppress noise or give the impression that the car is actually a sports car (see column 9, lines 36-41). In fact, the Examiner argues at length that changing undesirable oscillations into desired oscillations is the same as having two modes of noise attenuation. This essentially proves Applicant's point. It would be redundant at best to program a controller to select between a first driving mode and a second driving mode based upon engine speeds and engine

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loads where different noise attenuation is already provided by *Fischer, et al.* by emitting a variety of secondary oscillations. There is no benefit to making the proposed combination in this case.

Accordingly, claims 1-6 and 20-22 are in condition for allowance.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

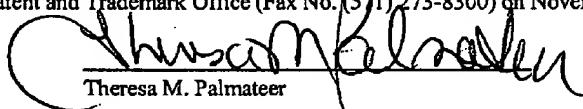
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CERTIFICATE OF FACSIMILE

I hereby certify that this Request for Reconsideration, relative to Application Serial No. 09/901,237 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (511) 273-8300) on November 15, 2007.


Theresa M. Palmateer

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